Court No.3

Criminal Misc. Application No. 742/ 2001

(Old no. 11532/87)

Mrs. V.M. Rao …Petitioner.

Vs.

1. Sri Andrew Prakash
2. State of U.P. …Respondents.

AND

Criminal Misc. Application No. 755/2001

Rt. Rev. P. Prasad Rao …Petitioner.

Vs.

1.Sri Andrew Prakash
2.State of U.P. .. Respondents.

Hon'ble Irshad Hussain, J.

Both the above criminal miscellaneous applications have been filed against the same criminal complaint hence these are decided together.

(2). None appear for the respondent No.1. Heard Sri Vinay Kumar learned counsel for the petitioners and learned A.G.A. for respondent No. 2 and perused the record.

(3). This petitions have been preferred for quashing of the criminal proceedings of criminal complaint case No. 1840/ 1986 Andrew Prakash Vs. Smt. V.M. Rao, pending in the court of Chief Judicial Magistrate, Dehradun.

(4). From the perusal of the record it appear that on 18-8-1986 the learned C.J.M., Dehradun took cognizance against the accused-petitioners for the offence punishable under section 420 I.P.C. merely on the ground that the payment of the cheque which was issued to the complainant was stopped. The complainant was practicing Advocate and was engaged by the accused-petitioners in connection with some litigation. A cheque of Rs. 1000/- was given towards his fee but the payment of the same was got stopped by the accused- petitioner. The contention of the complainant was that he had been cheated by the act of the accused-petitioners in getting the payment of the cheque stopped. There is nothing to indicate in the order that when the Advocate was engaged as a counsel by the accused-petitioners and he was misled in regard to his fee etc. If some dispute arose regarding the payment of fee the question of cheating does not arise. If the payment of the cheque was stopped it was not a case of cheating and at the most the complainant Advocate

could have sought recovery of his fee from the accused-petitioners. Considering this there was no prima facie case to proceed against the accused-petitioners for an offence under section 420 I.P.C. and the initiation of the criminal proceeding was nothing but abuse of process of the court.

(5) The petitions have merit and are to be allowed. The petitions are allowed and the proceedings of criminal case No.1840/1986 pending in the court of C.J.M., Dehradun are hereby quashed.

(Irshad Hussain, J.)

Dated: 27-9-2003
ISB